

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CIVIL NO. 97-3496 (DRD)

WALSH SECURITIES,
INC.,

Plaintiff,

v.

CRISTO PROPERTY
MANAGEMENT, LTD., a/k/a
G.J.L. LIMITED; DEK
HOMES OF NEW JERSEY,
INC.; OAKWOOD
PROPERTIES, INC.;
NATIONAL HOME FUNDING,
INC.; CAPITAL ASSETS
PROPERTY MANAGEMENT &
INVESTMENT CO., INC.;
CAPITAL ASSETS
PROPERTY MANAGEMENT,
L.L.C.; WILLIAM KANE;
GARY GRIESER; ROBERT
SKOWRENSKI, II;
RICHARD CALANNI;
RICHARD DI BENEDETTO;
JAMES R. BROWN; THOMAS
BRODO; ROLAND PIERSON;
STANLEY YACKER, ESQ.;
MICHAEL ALFIERI, ESQ.;
RICHARD PEPSNY, ESQ.;
ANTHONY M. CICALASE,
ESQ.; LAWRENCE CUZZI;
ANTHONY D'APOLITO; DAP
CONSULTING, INC.;
COMMONWEALTH LAND
TITLE INSURANCE CO.;
NATIONS TITLE
INSURANCE OF NEW YORK,
INC.;

COPY

CONTINUED
DEPOSITION UPON
ORAL EXAMINATION
OF
ROBERT C. WALSH

PAGE 262

<p>1 : 2 : 3 FIDELITY NATIONAL : 4 TITLE INSURANCE CO. OF : 5 NEW JERSEY; COASTAL : 6 TITLE AGENCY; DONNA : 7 PEPSNY; WEICHERT : 8 REALTORS and VECCHIO : 9 REALTY, INC. D/b/a : 10 MURPHY REALTY BETTER : 11 HOMES AND GARDENS, : 12 : 13 Defendants. : 14 : 15 : 16 : 17 : 18 : 19 : 20 : 21 : 22 : 23 : 24 : 25 :</p> <p>TRANSCRIPT of the stenographic notes of HOWARD A. RAPPAPORT, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, Certificate No. XI00416, taken at the offices of MC CARTER & ENGLISH, LLP, Four Gateway Center, Newark, New Jersey, on Friday, April 23, 2010, commencing at 8:35 a.m.</p>	<p>263</p> <p>1 INDEX 2 3 4 WITNESS PAGE 5 ROBERT C. WALSH 6 Cross-Examination by Mr. Hayes 266 7 EXHIBITS DESCRIPTION FOR IDENT. 8 Robert Closing instructions 373 9 Walsh-7 Robert Closing service letter 373 10 Walsh-8 Robert Letter via e-mail and 409 11 Walsh-9 regular mail dated 12 March 5, 2010 13 Robert Letter via e-mail and 409 14 Walsh-10 regular mail dated 15 April 6, 2010 16 Robert Uniform settlement 420 17 Walsh-11 statement 18 Robert Secondary mortgage loan 421 19 Walsh-12 Robert Wholesale mortgage 421 20 Walsh-13 commitment 21 Robert Contract for sale of real 433 22 Walsh-14 estate 23 Robert Document entitled, 433 24 Walsh-15 "Fidelity National Title" 25 Robert Review checklist 440 26 Walsh-16 Robert HUD 1, Uniform Settlement 440 27 Walsh-17 Statement 28 Robert HUD 1 review form 448 29 Walsh-18 Robert Uniform underwritten 448 30 Walsh-19 transmittal summary form 31 Robert Wholesale mortgage 453 32 Walsh-20 commitment 33 Robert WSI common stock 476 34 Walsh-21 ownership, SEC filing 35</p>
<p>264</p> <p>1 APPEARANCES: 2 STONE & MANGANINI 3 150 John F. Kennedy Parkway 4 Short Hills, New Jersey 07078 5 BY: DAVID STONE, ESQ., 6 AMY WALKER WAGNER, ESQ., 7 For the Plaintiff 8 MC CARTER & ENGLISH, LLP 9 Four Gateway Center 10 100 Mulberry Street 11 Newark, New Jersey 07102-0652 12 BY: DAVID R. KOTT, ESQ., 13 For Defendant/Third-Party Plaintiff Commonwealth Land 14 Title Insurance Company 15 FOX, ROTHSCHILD, O'BRIEN & FRANKEL 16 997 Lenox Drive 17 Lawrenceville, New Jersey 08648 18 BY: EDWARD J. HAYES, ESQ., 19 For Defendants Nations Title Insurance and 20 Fidelity National Title Insurance 21 METHFESSEL & WERBEL 22 3 Ethel Road 23 Suite 300 24 Edison, New Jersey 08818 25 BY: MARTIN R. MC GOWAN, ESQ., For Coastal Title Agency</p>	<p>265</p> <p>1 ROBERT C. WALSH, having been previously 2 sworn, testifies as follows: 3 CROSS-EXAMINATION (CONTINUING) 4 BY MR. HAYES: 5 Q Good morning, Mr. Walsh. 6 A Good morning. 7 Q You recall you were sworn at the last 8 deposition and that oath continues this morning? 9 A I do. 10 Q At the last deposition, Mr. Walsh, you 11 indicated that there were any number of things that 12 you were going to do in response to questions between 13 that deposition and before this morning. 14 Do you recall that? 15 A I do. 16 Q Did you take steps to try to answer some 17 of the questions that you could not answer at the 18 last deposition? 19 A I did. 20 Q Can you tell me what you did between the 21 last deposition and today to further prepare for 22 today's deposition other than speaking with your 23 attorneys? 24 MR. STONE: You can answer that 25 question, other than conversations with counsel.</p> <p>2 (Pages 263 to 266)</p>

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1 commitment?
 2 A Yes.
 3 Q And it is that same person who would
 4 check everything would also be the person who would
 5 take out unnecessary copies?
 6 A Correct.
 7 Q In the years that you worked at Walsh,
 8 Mr. Walsh, did you ever see a mass -- I'll use the
 9 word "cleansing," and I don't mean it in a derogatory
 10 way, just this process that you're talking about, but
 11 a mass cleansing of the files in the conference room
 12 at Walsh as opposed to in cubicles?
 13 A I believe I saw it many times.
 14 Q And why did that take place?
 15 A If an investor was coming in to look at
 16 files, and there were a lot of files, and that they
 17 were coming in in a relatively short period of time,
 18 the files would be on the table, and people would be
 19 taking the file and doing what they needed to do,
 20 putting documents in, taking documents out rather
 21 than just doing it at their cubicle.
 22 Q So that was a common occurrence?
 23 A It was.
 24 Q And it was generally in relation to
 25 someone, an investor, coming in to look at files?

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1 A Yes.
 2 Q Mr. Walsh, how was Walsh Securities'
 3 profitability determined? You testified at the last
 4 deposition that it wasn't about the number of loans.
 5 It was about profitability of Walsh, correct?
 6 A Correct.
 7 Q How was Walsh Securities' profitability
 8 determined?
 9 A Under GAAP.
 10 Q What does that mean?
 11 A Generally accepted accounting
 12 principles.
 13 Q What made Walsh profitable?
 14 A Selling loans, acquiring loans,
 15 controlling expenses.
 16 Q Were all nonperforming loans not
 17 profitable?
 18 A Correct.
 19 Q Were all performing loans profitable?
 20 A Not necessarily.
 21 Q Was Walsh Securities' profitability in
 22 any way affected by the jobs done by the
 23 broker/correspondents?
 24 A Could you be more specific, please?
 25 Q Let me ask you this first. I've been

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1 using a couple of terms.
 2 Is a broker and a correspondent the same
 3 thing as far as you are concerned, or are they
 4 different?
 5 A If we use participant, it is easier, and
 6 we would be on the same track.
 7 Q Okay.
 8 My understanding of the process,
 9 Mr. Walsh -- and correct me if I'm wrong -- is that
 10 the vast majority of your loans came from
 11 participants, correct?
 12 A Correct.
 13 Q Did Walsh do its own origination?
 14 A Very small sense.
 15 Q And a participant would be made aware of
 16 the types of loans that Walsh was interested in
 17 acquiring, correct?
 18 A Correct.
 19 Q Those were the programs or guidelines
 20 that you told Mr. Kott about at the last deposition?
 21 A Correct.
 22 Q And these participants would take a loan
 23 application, correct?
 24 A Correct.
 25 Q They would order an appraisal, correct?

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1 A Correct.
 2 Q The appraiser would have to be on the
 3 Walsh approved list, correct?
 4 A Correct.
 5 Q Walsh would not underwrite or approve a
 6 loan that was not accompanied by an approved Walsh
 7 appraiser, correct?
 8 A Correct. There may have been an
 9 exception, but correct.
 10 Q What would the exception be?
 11 A I don't know. There is nothing 100
 12 percent in life. So there may be an exception.
 13 Q Would the participant do the employment
 14 verification?
 15 A Walsh would.
 16 Q Would the employment do down payment
 17 verification?
 18 A Walsh would.
 19 Q Would the participant gather any
 20 documentation from the borrowers, potential
 21 borrowers, other than a loan application?
 22 A They would gather the information.
 23 Q What information would they gather in
 24 general? I don't want to get bogged down.
 25 A All the information that is necessary.

17 (Pages 323 to 326)

<p style="text-align: right;">327</p> <p>1 They would be getting -- whatever conditions that the</p> <p>2 underwriter would put on the commitment, the</p> <p>3 participant would gather that.</p> <p>4 Q You're ahead of me. I'm not at</p> <p>5 commitment yet.</p> <p>6 What did the participant do other than</p> <p>7 placing the necessary information into a loan</p> <p>8 application?</p> <p>9 A They would gather certain documentation.</p> <p>10 Q What documentation pre commitment would</p> <p>11 they gather?</p> <p>12 A If they were self-employed, they would</p> <p>13 get certain documentation. If they are a wage</p> <p>14 earner, they would get their W-2.</p> <p>15 They get just general type of</p> <p>16 information depending on what the program would be.</p> <p>17 Q Once all the information and</p> <p>18 documentation was gathered, they would submit it to</p> <p>19 Walsh for underwriting?</p> <p>20 A Correct.</p> <p>21 Q Walsh would then review the appraisal?</p> <p>22 A Correct.</p> <p>23 Q Walsh would verify employment?</p> <p>24 A Correct.</p> <p>25 Q Walsh would verify assets or deposits</p>	<p style="text-align: right;">329</p> <p>1 A Closing documents are drawn.</p> <p>2 Q By whom, by Walsh?</p> <p>3 A Correct.</p> <p>4 Q Closing documents being all the various</p> <p>5 loan documents, the mortgage, the notes, the</p> <p>6 affidavits?</p> <p>7 A Correct.</p> <p>8 Q And they are sent where?</p> <p>9 A Sent to the closing agent -- the</p> <p>10 attorney or the closing agent.</p> <p>11 Q Would Walsh require a signed commitment</p> <p>12 letter by the participant and the borrower before</p> <p>13 preparing the closing docs?</p> <p>14 A I think it was the participants.</p> <p>15 Q So the participant could commit the</p> <p>16 borrower to go forward in the transaction?</p> <p>17 A I think the borrower committed to the</p> <p>18 participant and the participant committed to us.</p> <p>19 Q Closing documents are prepared. They</p> <p>20 are sent to the closing attorney, correct?</p> <p>21 A Correct.</p> <p>22 Q Prior to that you receive information</p> <p>23 from the closing attorney regarding the manner in</p> <p>24 which the funds should be sent to the closing</p> <p>25 attorney, generally wire instructions?</p>
<p style="text-align: right;">328</p> <p>1 available for the borrower?</p> <p>2 A If need be, correct.</p> <p>3 Q That was all a function of your pre</p> <p>4 closing personnel?</p> <p>5 A Correct.</p> <p>6 Q And assuming that Walsh was satisfied</p> <p>7 with the package that it received, it would issue a</p> <p>8 commitment, correct?</p> <p>9 A Correct.</p> <p>10 Q And that was a form also that Walsh had,</p> <p>11 a commitment that had certain general requirements</p> <p>12 and then left space for individualized requirements</p> <p>13 of a particular loan, correct?</p> <p>14 A That is correct.</p> <p>15 Q That commitment would go to the</p> <p>16 participant?</p> <p>17 A Correct.</p> <p>18 Q And to the extent a commitment had</p> <p>19 conditions, it is the participant who would see that</p> <p>20 those conditions are fulfilled, correct?</p> <p>21 A Correct.</p> <p>22 Q What happened next in the process? You</p> <p>23 now have a committed to loan.</p> <p>24 A Correct.</p> <p>25 Q What happens next?</p>	<p style="text-align: right;">330</p> <p>1 A Could you repeat that for me?</p> <p>2 Q Sure.</p> <p>3 After you prepared the closing documents</p> <p>4 and sent them to the closing attorney, or prior to</p> <p>5 sending them, would you receive from the closing</p> <p>6 attorney information on how to transmit the funds to</p> <p>7 the closing attorney?</p> <p>8 A Correct.</p> <p>9 Q And you would receive prior to closing</p> <p>10 the title commitment, correct?</p> <p>11 A Correct.</p> <p>12 Q Now, are we still in the underwriting</p> <p>13 department at Walsh, Mr. Walsh, at that point in</p> <p>14 time, or are we now in some other department?</p> <p>15 A We are out of underwriting.</p> <p>16 I'm assuming, unless the commitment to</p> <p>17 the participant is now done, there are conditions on</p> <p>18 the commitment. I'm assuming that they have been</p> <p>19 filled.</p> <p>20 Q I'm assuming if there are problems with</p> <p>21 those conditions, then it goes back to underwriting</p> <p>22 to see whether or not an exception would be made?</p> <p>23 A Correct.</p> <p>24 Q Assuming they are met, underwriting is</p> <p>25 now done.</p>

18 (Pages 327 to 330)

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1 A That is correct.

2 Q Which department at Walsh is now

3 involved up to the closing?

4 A The closing department.

5 Q Now, the closing department is not doing

6 any separate, independent verification. Those were

7 things that the underwriting department did, correct?

8 A Could you be more specific?

9 Q Rather than me ask you, tell me what the

10 closing department did from the time it took over a

11 file to the time of closing besides preparing the

12 closing docs.

13 A And reviewing whatever documents that

14 were necessary to review.

15 Q Would the closing department be the

16 department that reviewed the title or the

17 underwriting department?

18 A Closing.

19 Q Generally, you wouldn't expect to see a

20 title commitment prior to committing to make the

21 loan, correct?

22 A Correct.

23 Q So that department would look at the

24 title report?

25 A Correct.

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1 Q Would issue the closing documents?

2 A Correct.

3 Q What else would that department do?

4 A Issue the closing instructions.

5 Q They would be prepared by that

6 department, correct?

7 A Correct.

8 Q And then sent to the closing attorney?

9 A And the title agent, correct.

10 Q What else would that department do?

11 A A range that would get the closing

12 protection letter, arrange their funds to be

13 transferred, and that they would get the package

14 returned to them.

15 Q So that department's functions start at

16 mortgage commitment and end at the receipt of the

17 documents from closing?

18 A To my knowledge that's correct.

19 Q And then from that point forward it's

20 post closing?

21 A To my knowledge, correct.

22 Q And is it a condition, Mr. Walsh, or was

23 it a condition of your company that a signed closing

24 protection letter had to be in Walsh Securities'

25 possession before you would fund?

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1 A Correct.

2 Q Were there any exceptions made to that?

3 A I don't know the answer to that.

4 Q In your review of the files, either in

5 anticipation of your deposition several years ago or

6 today, did you see any loan files that didn't have

7 closing protection letters in them?

8 A It's tough to see something that's not

9 there. I saw files that I reviewed, it appeared like

10 they were in there.

11 Q Did you see any closing protection

12 letters that were not signed?

13 A I don't recall seeing that.

14 Q Are you aware, Mr. Walsh, in New Jersey

15 closing protection letters are transaction specific?

16 A I believe so, yes.

17 Q Unlike other states where they are

18 issued in general and effective until revoked,

19 correct?

20 A I don't know the answer to that.

21 Q Based on your experience around the

22 country, you don't know the way closing protection

23 letters are drawn in other states?

24 A I do not.

25 Q Did you see closing protection letters

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1 in any of the files that were blank as to what the

2 transaction was they were issued for?

3 A I don't recall.

4 Q Do you recall if closing protection

5 letters are issued for the actions of a particular

6 individual?

7 A Yes.

8 Q And that it's important to be sure that

9 the closing protection letter is actually issued to

10 cover the conduct of the actual person conducting the

11 closing, correct?

12 A Could you repeat that?

13 Q Sure. Was it important to Walsh to have

14 a closing protection letter that referenced the

15 actual closing attorney who was conducting the

16 settlement?

17 A To my knowledge, yes.

18 Q You believe that was something that was

19 necessary in order to protect Walsh, correct?

20 A Correct.

21 Q In general, Mr. Walsh, can you tell me

22 what protection did Walsh believe the closing

23 protection letter afforded it?

24 A If the approved attorney committed

25 fraud, he did not follow our closing instructions,

19 (Pages 331 to 334)

<p>335</p> <p>1 did something other than what our closing</p> <p>2 instructions called for, did something wrong, we were</p> <p>3 going to be covered to the extent of the letter.</p> <p>4 That's fraud, but I don't want to get</p> <p>5 into specifics.</p> <p>6 Q We will today.</p> <p>7 A I'm sure we will.</p> <p>8 MR. STONE: Can we just take a short</p> <p>9 break?</p> <p>10 MR. HAYES: Sure.</p> <p>11 (Recess at 9:50 a.m.)</p> <p>12 (Deposition resumes at 10:05 a.m.)</p> <p>13 Q Ready to proceed, Mr. Walsh?</p> <p>14 A I am.</p> <p>15 Q Thank you.</p> <p>16 Did you believe, Mr. Walsh, that a</p> <p>17 closing protection letter protected Walsh against any</p> <p>18 type of fraud committed by a closing agent?</p> <p>19 A Yes.</p> <p>20 Q Did you believe it protected against any</p> <p>21 violation of your closing instruction letters?</p> <p>22 MR. STONE: Objection to form.</p> <p>23 You can answer it to the extent it</p> <p>24 didn't call for a legal conclusion. Just your own</p> <p>25 understanding.</p>	<p>337</p> <p>1 point in time when documents were received back from</p> <p>2 the attorney, correct?</p> <p>3 A Correct.</p> <p>4 Q Is that the person, Mr. Walsh, with whom</p> <p>5 the closing attorney was to communicate regarding any</p> <p>6 issues?</p> <p>7 A Correct.</p> <p>8 Q Is that the person that had the ultimate</p> <p>9 say-so as to whether or not Walsh would fund a loan?</p> <p>10 A I'm not sure if I understand the</p> <p>11 question.</p> <p>12 Q Someone at Walsh had to decide whether</p> <p>13 or not you were satisfied, such that the loan would</p> <p>14 be funded, correct?</p> <p>15 A Closing instructions were sent to the</p> <p>16 attorney.</p> <p>17 Q Right.</p> <p>18 A We'll use Yacker, if you don't mind.</p> <p>19 Q Fine.</p> <p>20 A Closing instructions were sent to</p> <p>21 Yacker. We said, do not release the funds until</p> <p>22 these things are done, follow the instructions.</p> <p>23 Q Here's my question. From my</p> <p>24 understanding -- correct me if I'm wrong -- in the</p> <p>25 vast majority of mortgage transactions, the funding</p>
<p>336</p> <p>1 A Yeah.</p> <p>2 Q Did you ever read a closing protection</p> <p>3 letter?</p> <p>4 A I did.</p> <p>5 Q Did you read the ones in this case?</p> <p>6 A I did.</p> <p>7 Q How many of them did you read?</p> <p>8 A Approximately 10.</p> <p>9 Q To your knowledge, Mr. Walsh, did anyone</p> <p>10 from Walsh ever go through all of the loan files to</p> <p>11 determine -- on the 220 loans, to determine if you</p> <p>12 had a closing protection letter for all of those</p> <p>13 files?</p> <p>14 A I do not know.</p> <p>15 Q Who would know that?</p> <p>16 A Fred Schlesinger.</p> <p>17 Q Do you have any reason to believe,</p> <p>18 Mr. Walsh, that any of the loans were closed without</p> <p>19 a closing protection letter?</p> <p>20 A I have no reason to believe they were.</p> <p>21 Q We were back in the process of a loan</p> <p>22 making its way from the initial application with the</p> <p>23 participant to the sale in the secondary market.</p> <p>24 We were talking about, I believe, the</p> <p>25 closing people, which you said took us up to the</p>	<p>338</p> <p>1 takes place at or after the closing.</p> <p>2 Is that a correct understanding on my</p> <p>3 part?</p> <p>4 A Correct.</p> <p>5 Q Funding does not take place prior to</p> <p>6 settlement, correct?</p> <p>7 A Correct.</p> <p>8 Q So the reason funding takes place at or</p> <p>9 after settlement -- and again, correct me if I'm</p> <p>10 wrong -- is that you want to be able to insure that</p> <p>11 your conditions and requirements are met before you</p> <p>12 leave your money out the door, correct?</p> <p>13 A Correct.</p> <p>14 Q That's one of the reasons why you</p> <p>15 require an HUD 1, so that you can determine if the</p> <p>16 financial terms of the deal match what you expect</p> <p>17 them to be, correct?</p> <p>18 A Correct.</p> <p>19 Q And that's why you expect the closing</p> <p>20 attorney to certify to you that I have fulfilled my</p> <p>21 obligations under the closing instructions, correct?</p> <p>22 A Correct.</p> <p>23 Q You expect that to take place before</p> <p>24 funding, correct?</p> <p>25 A Correct.</p>

20 (Pages 335 to 338)

Walsh cross

<p>379</p> <p>1 Q The HUD lists the buyer and seller, does 2 it not?</p> <p>3 A Yes.</p> <p>4 Q If in fact the closer had required the 5 conditions to be fulfilled, he or she would see an 6 HUD that has the financial terms and who the parties 7 to the transaction are, correct?</p> <p>8 A Correct.</p> <p>9 Q And then below that it says, "You are 10 authorized to disburse the loan proceeds only when 11 all of the requirements and conditions have been 12 satisfied."</p> <p>13 Do you see that?</p> <p>14 A I do.</p> <p>15 Q Was the closing agent permitted to 16 disburse without having a verbal okay from the 17 funder?</p> <p>18 A Could you repeat that, if possible?</p> <p>19 Q Sure.</p> <p>20 The loans had to be funded before the 21 closing agent could disburse, correct?</p> <p>22 A Correct.</p> <p>23 Q So at some point in time Carolynn is 24 going to be satisfied that she can fund this loan of 25 \$165,000, correct?</p>	<p>381</p> <p>1 A I do not know the answer.</p> <p>2 Q Who would know that, Mr. Fred 3 Schlesinger?</p> <p>4 A Yes.</p> <p>5 Q That was not something you asked him 6 after the last deposition?</p> <p>7 A I did not.</p> <p>8 Q Now, below that section B, Mr. Walsh, 9 there appear to be specific requirements placed into 10 this particular transaction. Would you agree with 11 me?</p> <p>12 A I would.</p> <p>13 Q So this part would be tailored to the 14 particular loan involved, correct?</p> <p>15 A Correct.</p> <p>16 Q Section C says, "Payoff requirements," 17 and in this one it's blank.</p> <p>18 What is that section used for?</p> <p>19 A I do not know.</p> <p>20 Q Section B indicates that there must be 21 satisfactory evidence of hazard insurance, correct?</p> <p>22 A Correct.</p> <p>23 Q And there needs to be a listing of 24 National Home Funding as the insurance loss payee, 25 correct?</p>
<p>380</p> <p>1 A Correct.</p> <p>2 Q And those funds would be likely wired to 3 the closing attorney's account, correct?</p> <p>4 A Correct.</p> <p>5 Q And the closing attorney was then 6 responsible to disburse the funds, correct?</p> <p>7 A Correct.</p> <p>8 Q And would it be your understanding, 9 Mr. Walsh, based on your experience, that this should 10 be consistent with the HUD 1?</p> <p>11 A Yes.</p> <p>12 Q My question is, after the funding took 13 place from Carolynn, was there any further obligation 14 on the part of the closing attorney to get a blessing 15 to disburse the moneys that he had received?</p> <p>16 A Could you repeat that one more time?</p> <p>17 Q Sure.</p> <p>18 The closing attorney has now received a 19 wire because Walsh is satisfied to fund the 20 transaction.</p> <p>21 A Correct. He probably received it prior 22 to that. He wasn't authorized to disburse it.</p> <p>23 Q When he is ready to disburse, my 24 question is, does he need further approval from Walsh 25 before he can disburse after he receives the funds?</p>	<p>382</p> <p>1 A Correct.</p> <p>2 Q Why was that not Walsh?</p> <p>3 A It is the way procedures were set up.</p> <p>4 Q In fact, it was set up in such a way 5 that these loans would in fact be made in the name of 6 National Home Funding, correct, not Walsh?</p> <p>7 MR. STONE: Object to the form of the 8 question.</p> <p>9 You can answer.</p> <p>10 A Correct, and Walsh supplied the funds.</p> <p>11 Q Section E deals with the title insurance 12 requirements, correct?</p> <p>13 A Correct.</p> <p>14 Q And it requires that a policy be issued 15 in the name of National Home Funding, its successors 16 and or assigns?</p> <p>17 A Correct.</p> <p>18 Q And it indicates which endorsements are 19 being required, correct?</p> <p>20 A It does.</p> <p>21 Q Subsection F is, "Additional closing 22 requirements." Do you see that?</p> <p>23 A I do.</p> <p>24 Q And then the last page, Mr. Walsh, 25 section G, sets forth the permitted fees and costs of</p>

31 (Pages 379 to 382)

1 UNITED STATES DISTRICT COURT
 2 DISTRICT OF NEW JERSEY
 3 Civil Action No. 97-cv-3496 (DRD) (MAS)
 4 WALSH SECURITIES, INC., :
 5 Plaintiff, : DEPOSITION OF:
 6 v. : ROBERT C. WALSH
 (VOLUME III)

7 CRISTO PROPERTY MANAGEMENT, LTD., :
 a/k/a G.J.L. LIMITED; DEK HOMES
 8 OF NEW JERSEY, INC.; OAKWOOD :
 PROPERTIES, INC.; NATIONAL HOME
 9 FUNDING, INC.; CAPITAL ASSETS :
 PROPERTY MANAGEMENT & INVESTMENT
 CO., INC.; CAPITAL ASSETS PROPERTY:
 10 MANAGEMENT, L.L.C.; WILLIAM KANE;
 GARY GRIESER; ROBERT SKOWRENSKI, :
 11 II; RICHARD CALANNI; RICHARD
 DiBENEDETTO; JAMES R. BROWN; :
 THOMAS BRODO; ROLAND PIERSON;
 12 STANLEY YACKER, ESQ.; MICHAEL :
 ALFIERI, ESQ.; RICHARD PEPSNY,
 13 ESQ.; ANTHONY M. CICALEASE, ESQ.; :
 LAWRENCE CUZZI; ANTHONY D'APOLITO;
 14 DAP CONSULTING, INC.; COMMONWEALTH:
 LAND TITLE INSURANCE CO.; NATIONS
 15 TITLE INSURANCE OF NEW YORK, INC.;;
 FIDELITY NATIONAL TITLE INSURANCE
 16 CO. OF NEW JERSEY; COASTAL TITLE :
 AGENCY; DONNA PEPSNY; WEICHERT
 17 REALTORS and VECCHIO REALTY, INC. :
 d/b/a MURPHY REALTY BETTER HOMES
 18 AND GARDENS, :
 19 :

Defendants.

20 X-----X

21 TRANSCRIPT of testimony as taken by and
 before CHERYL McGANN, a Certified Court Reporter
 22 of the State of New Jersey, at the offices of
 McCARTER & ENGLISH, LLP, Four Gateway Center,
 23 Newark, New Jersey, on Friday, September 30, 2011,
 commencing at 9:14 a.m.

24 Job No. NJ356367
 25

Certified
 Transcript

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I N D E X
WITNESS EXAMINATION

ROBERT C. WALSH

By Mr. Kott: 541,576,606,665,691,715,719,740

By Mr. Hayes: 563,597,619,667,689,704,722,739

E X H I B I T S

Number	Description	Page
Robert	Confidential Settlement Agreement	
Walsh-22	Bates stamped COM-Cherokee-00303-392	555
Robert	Three-page article from July 13, 1997,	
Walsh-23	edition of Sunday Star Ledger	581
Robert	Two-page article from July 10, 1997,	
Walsh-24	edition of Asbury Park Press	581
Robert	File copy of September 29, 1997, letter	
Walsh-25	to Mr. Schlesinger from David R. Kott	
	with certified mail slip attached	583
Robert	August 12, 1997, letter Bates stamped	
Walsh-26	COM 01490 from Donna Sullivan to	
	Jeffrey Goodman	593
Robert	September 5, 1997, letter Bates stamped	
Walsh-27	COM 01715 through 16 from Fred Schlesinger	
	to Donna Sullivan	593
Robert	July 28, 1997, letter to Commonwealth from	
Walsh-28	Jeffrey M. Goodman, Latham & Watkins	605
Robert	Fax from John Oberdorf to Dinah Raven	
Walsh-29	with attached press release Bates stamped	
	WSI 0070147-0070149	608
Robert	January 31, 1997, Quality Control	
Walsh-30	Memorandum from Veronica Gonzalez-Lehman,	
	CC to James Walsh and Peter Trebour	
	Bates stamped WSI 0075078	649
Robert	Closing Instructions document Bates	
Walsh-31	stamped SYSW 020142, 20143 and 20141	672

E X H I B I T S (Continued)

Number	Description	Page
Robert Walsh-32	Commonwealth Land Title Insurance Company document Bates stamped COM 18304	732
Robert Walsh-33	Document Bates stamped COM/Walsh 000668	733

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(Exhibits retained by counsel.)

1 MR. KOTT: That's all I have on that.
2 Off the record.

3 (A discussion was held off the record.)

4 FURTHER EXAMINATION BY MR. HAYES:

5 Q. Mr. Walsh, will you agree with me that
6 assignments are critical documents to evidence
7 ownership of a mortgage?

8 A. I don't know legally what's the response on
9 that.

10 Q. Well, based on your years of experience in
11 the mortgage business, sir, you do understand, do
12 you not, that assignments are the manner in which
13 mortgages are transferred?

14 A. I do.

15 Q. And do you understand the importance of
16 recording documents?

17 A. I do.

18 Q. And do you understand the importance of
19 assignments being recorded so that the public
20 records reflect the current owner of a mortgage
21 obligation?

22 A. I do.

23 Q. You understood these loans were all closing
24 in NHF's name, correct?

25 A. Correct.

1 Q. And you were asked at at least one, if not
2 both, of the prior depositions why Walsh mandated
3 that these loans be closed in NHF's name, not
4 Walsh's name; and in those prior two depositions,
5 you didn't have an answer for that.

6 Have you been able to determine now, prior to
7 today, why it was done that way?

8 A. Yes.

9 Q. Tell us why.

10 A. It was done like that throughout the whole
11 company. It wasn't unique to NHF. It was done for
12 RESPA. It was done because it became a secondary
13 market transaction, and we believed that it would
14 limit some of our potential risk.

15 Q. So part of the reason why it was set up this
16 way was so that if NHF had engaged in wrongdoing you
17 would limit your potential liability as the holder
18 of the loan?

19 A. That was my understanding.

20 Q. And what was the RESPA violation or RESPA
21 compliance issue that you felt doing it this way
22 required?

23 A. Yield spread premiums.

24 Q. Okay, and what effect did this manner of
25 doing business have on the yield spread premium that

1 could be charged and/or disclosed on these
2 transactions?

3 A. The lender did not need to disclose.

4 Q. And the yield spread premium was a charge to
5 the borrower, correct?

6 A. No.

7 Q. What was it?

8 A. It was a price paid from a company like Walsh
9 that was acquiring the loans.

10 Q. Did it come out of the loan, Mr. Walsh?

11 A. Did the borrower pay, no. It was a premium
12 paid for from Walsh to the correspondent.

13 Q. But if it had to be disclosed, it would have
14 been disclosed to the borrower; correct?

15 A. That is correct.

16 Q. Who would understand more about the financial
17 arrangements that existed between a participant and
18 Walsh?

19 A. Well, that was HUD's ruling; and that's
20 exactly what we followed was HUD's rulings.

21 Q. So the loans were in part set up the way in
22 which they were so that you wouldn't have to make
23 that disclosure?

24 A. We wouldn't make the disclosure. It wasn't
25 our disclosure to make.

1 Q. Who would have made the disclosure, NHF?

2 A. Correct, NHF and all our other
3 correspondents.

4 Q. That's fine. And, again, I'm not suggesting --

5 A. That's fine.

6 Q. -- that you dealt with NHF differently.

7 A. Okay.

8 Q. What I was trying to get at is why Walsh
9 mandated that the loans be closed in NHF's name.

10 A. Fine.

11 Q. Who prepared the assignments on the NHF
12 loans?

13 A. I believe we did.

14 Q. Okay, and how were those assignments
15 transmitted to the closing attorneys?

16 A. I don't know the answer.

17 Q. Would you expect those assignments to be a
18 part of the loan package that was sent to the
19 closing attorney?

20 A. I don't know if it was the loan package. I
21 don't know what loan package you're referring to.
22 Was it the closing package?

23 Q. Yes, sir.

24 A. Oh, okay. I'm not sure.

25 Q. Well, if it was not transmitted as part of

1 the closing package -- again, and I'm going to ask
2 you to draw on your years of experience in the
3 business -- how else would it have been transmitted
4 to the closing attorney?

5 A. It's possible "NHF" in this case would have
6 sent it there.

7 Q. Well, would Walsh have prepared it, sent it
8 to NHF, and then NHF would send it to the closing
9 attorney?

10 A. It's clear it would have been sent to NHF and
11 probably would have been sent to the closing
12 attorney, but it's clear it would have been sent to
13 NHF.

14 Q. So you would have relied on NHF to deliver
15 that assignment to the closing attorney so that it
16 could be recorded as part of the package?

17 A. That's not what I'm saying. I'm saying I
18 don't know.

19 Q. Well, can you explain for me, Mr. Walsh,
20 why Walsh did not require the recording of the
21 assignment as part of its closing instructions?

22 A. We got the assignment from NHF, and we
23 assigned that loan in blank to the trust.

24 Q. So what you're telling me is at some point in
25 time, Walsh sent the assignments to NHF. NHF would

1 execute those assignments and send them back to
2 Walsh?

3 A. Correct.

4 Q. And then Walsh would execute an assignment in
5 blank, which could ultimately be used by whoever the
6 acquirer of that loan is?

7 A. Correct.

8 Q. So that would explain why Walsh didn't ask
9 the closing attorney to record those assignments,
10 because they didn't go to the closing attorney.
11 They came directly back to you, correct?

12 A. I don't know the answer to that.

13 (Closing Instructions document Bates
14 stamped SYSW 020142, 20143 and 20141 was received
15 and marked Defendant's Exhibit Robert Walsh-31 for
16 Identification.)

17 Exhibit Robert Walsh 31 is something
18 entitled Closing Instructions by Walsh Securities,
19 Inc. on the first page. It indicates it's for
20 Rafael Bustos, Sr., at a property 138 Ridge Avenue,
21 Asbury Park, New Jersey, Bates stamped SYSW 020142
22 through 020141.

23 Q. Mr. Walsh, do you have that document before
24 you?

25 A. I do.

1 Q. I will represent to you, sir, there's nothing
2 particular about this one transaction, as to why
3 this set of closing instructions was pulled. It was
4 just a set of closing instructions.

5 A. Okay. That's fine.

6 Q. Do you recognize this as the form of closing
7 instructions that Walsh generated?

8 A. I do.

9 Q. Okay, and these would have been generated
10 after the loan commitment had been issued?

11 A. Correct.

12 Q. And you would expect these closing
13 instructions to be generated before the loan funded,
14 correct?

15 A. Correct.

16 Q. Okay. And these loan instructions, closing
17 instructions, would be sent to Mr. Yacker; correct?

18 A. Correct.

19 Q. Mr. Agel testified in his deposition that
20 Walsh never sent any of the closing instructions to
21 him; that they were, in fact, sent directly to
22 Mr. Yacker.

23 Do you have any reason to disagree with his
24 testimony?

25 A. The only reason, I think that in Coastal's

1 files we saw these, and so that's my only basis.

2 Q. Okay. So you know they were in the files,
3 but you don't know whether they got in the files
4 because after this closing was completed Mr. Yacker
5 may have included them with what he sent Coastal?

6 A. That's correct.

7 Q. Under the document section of this closing
8 instruction, the capital letter A, Mr. Walsh, do you
9 see that section?

10 A. I do.

11 Q. There's a listing of all the documents that
12 are being transmitted to the closing attorney for
13 use in the transaction.

14 Do you see that?

15 A. I do.

16 Q. And do you see that the assignment is not
17 referenced anywhere within that document?

18 A. I do.

19 Q. And would you expect, Mr. Walsh, that if the
20 assignment was transmitted to Mr. Yacker on this
21 transaction it would be an identified document here?

22 A. I do.

23 Q. Okay, and is this consistent with what you
24 believe happened here in that these assignments went
25 to NHF and then came back directly to Walsh for

1 processing?

2 A. It would be speculation, but I can understand
3 the logic.

4 Q. Okay. Mr. Skowrenski testified that there
5 were occasions when the assignments didn't come in
6 with the loan package but at some point that he
7 might get a large number of assignments to execute.

8 Do you have any reason to disbelieve that
9 testimony?

10 A. I do. Based on the files that we looked at,
11 there was assignments in all the files; and they
12 were dated as of that particular date.

13 Q. When Walsh sold the loan -- a whole loan
14 sale, would it provide the NHF-to-Walsh assignment
15 to the whole loan buyer?

16 A. Yes, and then Walsh to the whole loan buyer.

17 Q. So a whole loan buyer would get two
18 assignments; one from NHF to Walsh, one from Walsh
19 to, for example, Cityscape?

20 A. Yes.

21 Q. And Walsh would expect the whole loan buyer
22 to record those assignments evidencing its ownership
23 of the loan, correct?

24 A. Correct.

25 Q. Okay. When you bought back loans after the

1 fraud was discovered, were there assignments from
2 the whole loan purchaser back to Walsh?

3 A. I believe so, but I don't know the answer to
4 that.

5 Q. Where are those documents?

6 A. I don't know the answer to that.

7 Q. Is it possible, Mr. Walsh, that the whole
8 loan buyers never recorded the assignments into the
9 whole loan buyer such that you didn't need an
10 assignment back from the whole loan buyer?

11 A. I don't know the answer to that.

12 Q. Okay. Are you aware, Mr. Walsh, that part of
13 your claim in the title claim portion of this case
14 is that Walsh did not get notice of certain tax or
15 foreclosure sales because the assignments to Walsh
16 were not recorded?

17 A. Yes.

18 Q. Can you tell me the basis upon which the
19 title company is responsible for the lack of
20 recording of the assignments when you have
21 acknowledged that those assignments never went into
22 the possession of the title company?

23 A. I can't explain that.

24 Q. But are you still pursuing that claim on
25 those files?

1 A. I got to talk to my attorney.

2 Q. Are you aware of any factual basis upon which
3 you can submit a claim that is based on the lack of
4 recording of an assignment?

5 A. Again, it's a legal conclusion.

6 Q. That's not my question. I understand you'll
7 talk to Mr. Magnanini afterwards as to whether
8 you've got a legal basis.

9 I'm asking you as the 30(b)(6) witness do you
10 have any facts that support a claim against the
11 title company on nonrecorded assignments when those
12 assignments never went to the title company in the
13 first place?

14 A. No.

15 MR. MAGNANINI: Objection to form.

16 You answered it.

17 Q. Mr. Walsh, I'm going to show you a document
18 that was previously marked at one of your earlier
19 depositions as Robert Walsh-11. It is a two-page
20 HUD-1 from the Salvatoriello transaction.

21 Do you see that?

22 A. Yes, I do.

23 Q. Okay. Mr. Walsh, this is a transaction where
24 Dee & Sons was selling the property to the
25 Salvatoriellos; correct?